I do hereby certify this to be a complete, accurate, and true copy of the document which is on file or is of record in the offices of the Texas Board of Nursing.
Executive Director of the Board

BEFORE THE TEXAS BOARD OF NURSING

****

In the Matter of	§	AGREED
Vocational Nurse License Number 174721	§	
issued to MELISSA BURKE	§	ORDER

On this day the Texas Board of Nursing, hereinafter referred to as the Board, considered the matter of MELISSA BURKE, Vocational Nurse License Number 174721, hereinafter referred to as Respondent. This action was taken in accordance with Section 301.453(c), Texas Occupations Code.

Respondent waived representation by counsel, informal proceedings, notice and hearing, and agreed to the entry of this Order.

The Board makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Prior to the institution of Agency proceedings, notice of the matters specified below in these Findings of Fact was provided to Respondent and Respondent was given an opportunity to show compliance with all requirements of the law for retention of the license(s).

2. Respondent waived representation by counsel, informal proceedings, notice and hearing, and agreed to the entry of this Order.

3. Respondent is currently licensed to practice vocational nursing in the State of Texas.

4. Respondent received a Certificate in Nursing from Blinn College, Brenham, Texas, on August 11, 1999. Respondent was licensed to practice vocational nursing in the State of Texas on December 16, 1999.

5. Respondent's vocational nursing employment history includes:

12/99 - 2002	LVN	Bluebonnet Hills Care Center Brenham, Texas

Respondent's vocational nursing employment history continued:

2002 - 2003	Staff Nurse	Brenham Rest Home Brenham, Texas
08/03 - Unknown	Staff Nurse	Colonial Belle Nursing Home Bellville, Texas
07/04 - 02/07	Staff Nurse/ Charge Nurse	Brenham Rest Home Brenham, Texas
08/03 - 04/07	Staff Nurse	Colonial Belle Nursing Home Bellville, Texas
04/07 - 07/07	Staff Nurse/ Charge Nurse	Brenham Rest Home Brenham, Texas
03/09 - 01/11	Staff Nurse	Colonial Belle Nursing Home Bellville, Texas
02/11 - Present	Unknown	

6. On or about December 6, 1999, Respondent was issued an Agreed Board Order by the Board of Vocational Nurse Examiners for the State of Texas. A copy of the Agreed Board Order dated December 6, 1999, is attached and incorporated by reference as part of this Order.

7. On or about August 8, 2006, Respondent was issued an Agreed Order by the Board of Nurse Examiners for the State of Texas which required her to participate in and successfully complete the Texas Peer Assistance Program for Nurses (TPAPN). A copy of the Findings of Fact, Conclusions of Law, and Agreed Order dated August 8, 2006, is attached and incorporated by reference as part of this Order.

8. On or about August 14, 2007, Respondent's license to practice vocational nursing in the State of Texas was Suspended through an Agreed Order issued by the Board of Nurse Examiners for the State of Texas. A copy of the Findings of Fact, Conclusions of Law, and Agreed Order dated August 14, 2007, is attached and incorporated by reference as part of this Order.

9. On or about May 11, 2011, Respondent entered a plea of Not Guilty and was convicted of DRIVING WHILE INTOXICATED, a 3rd Degree felony offense committed on September 10, 2009, in the 155th Judicial District Court of Austin County, Texas, under Cause No. 2009R-0119. As a result of the conviction, Respondent was sentenced to confinement in the Texas Department of Criminal Justice-Institutional Division for a term of ten (10) years; however, imposition of the sentence was suspended and Respondent was placed on probation for ten (10) years and ordered to pay court costs.

10. Respondent, by her signature to this Order, expresses her desire to voluntarily surrender her license(s) to practice nursing in the State of Texas.

11. The Board policy implementing Rule 213.29 in effect on the date of this Agreed Order provides discretion by the Executive Director for consideration of conditional reinstatement after proof of twelve (12) consecutive months of abstinence from alcohol and drugs followed by licensure limitations/stipulations and/or peer assistance program participation.

12. The Board finds that there exists serious risks to public health and safety as a result of impaired nursing care due to intemperate use of controlled substances or chemical dependency.

CONCLUSIONS OF LAW

1. Pursuant to Texas Occupations Code, Sections 301.451-301.555, the Board has jurisdiction over this matter.

2. Notice was served in accordance with law.

3. The evidence received is sufficient to prove violation(s) of 22 TEX. ADMIN. CODE §217.12(13).

4. The evidence received is sufficient cause pursuant to Section 301.452(b)(3)&(10), Texas Occupations Code, to take disciplinary action against Vocational Nurse License Number 174721, heretofore issued to MELISSA BURKE, including revocation of Respondent's license(s) to practice nursing in the State of Texas.

5. Under Section 301.453(c), Texas Occupations Code, the Board has the authority to accept the voluntary surrender of a license.

6. Under Section 301.453(d), Texas Occupations Code, as amended, the Board may impose conditions for reinstatement of licensure.

7. Any subsequent reinstatement of this license will be controlled by Section 301.453(d), Texas Occupations Code, and 22 TEX. ADMIN. CODE §213.26-.29, and any amendments thereof in effect at the time of the reinstatement.

ORDER

NOW, THEREFORE, IT IS AGREED and ORDERED that the VOLUNTARY SURRENDER of Vocational Nurse License Number 174721, heretofore issued to MELISSA BURKE, to practice nursing in the State of Texas, is accepted by the Texas Board of Nursing. In

connection with this acceptance, the Board imposes the following conditions:

1. RESPONDENT SHALL NOT practice vocational nursing, use the title "vocational nurse" or the abbreviation "LVN" or wear any insignia identifying herself as a vocational nurse or use any designation which, directly or indirectly, would lead any person to believe that RESPONDENT is a vocational nurse during the period in which the license is surrendered.

2. RESPONDENT SHALL NOT petition for reinstatement of licensure until: one (1) year has elapsed from the date of this Order; and, RESPONDENT has obtained objective, verifiable proof of twelve (12) consecutive months of sobriety immediately preceding the petition.

3. Upon petitioning for reinstatement, RESPONDENT SHALL satisfy all then existing requirements for relicensure.

IT IS FURTHER AGREED and ORDERED that this Order SHALL be applicable to Respondent's nurse licensure compact privileges, if any, to practice nursing in the State of Texas.

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RESPONDENT'S CERTIFICATION

I understand that I have the right to legal counsel prior to signing this Agreed Order. I waive representation by counsel. I have reviewed this Order. I neither admit nor deny the violation(s) alleged herein. By my signature on this Order, I agree to the Findings of Fact, Conclusions of Law, Order, and any conditions of said Order, to avoid further disciplinary action in this matter. I waive judicial review of this Order. I understand that this Order becomes final when accepted by the Executive Director at which time the terms of this Order become effective and a copy will be mailed to me.

Signed this 22nd day of March, 2013.

Melissa Burke

MELISSA BURKE, Respondent

Sworn to and subscribed before me this 22nd day of March, 2013.

SEAL

Margaret Schneider

Notary Public in and for the State of Texas

MARGARET SCHNEIDER
Notary Public, State of Texas
Commission Expires 01-22-2014

WHEREFORE, PREMISES CONSIDERED, the Executive Director on behalf of the Texas Board of Nursing does hereby accept the voluntary surrender of Vocational Nurse License Number 174721, previously issued to MELISSA BURKE.

Effective this 25th day of March, 2013.

Katherine A. Thomas, MN, RN, FAAN
Executive Director on behalf
of said Board

00174721

BOARD OF VOCATIONAL NURSE EXAMINERS	*	STATE OF TEXAS
	*	
VS.	*	
	*	
MELISSA JASEK	*	
AKA MELISSA KAYE TODD	*	COUNTY OF TRAVIS

AGREED BOARD ORDER

On this day came to be considered by the Board of Vocational Nurse Examiners the matter of MELISSA KAYE JASEK AKA MELISSA KAYE TODD, an Applicant for Licensure by, examination hereinafter called Applicant.

By letter, the Board of Vocational Nurse Examiners sent preliminary notice to Applicant of its intent to take disciplinary action with respect to said Application for Licensure, as a result of a subsequent investigation. Said investigation produced evidence indicating that Applicant has engaged in the intemperate use of alcohol or drugs, in violation of the Health Occupations Code, Chapter 302, Section 302.402 (a) (9), in the following manner:

I.

a. On or about July 1, 1999, Applicant submitted her Application for Licensure by Examination to the Board of Vocational Nurse Examiners for the State of Texas. On said Application, Applicant falsely answered "no" to the question(s) asking: "Have you engaged in the intemperate use of alcohol within the past three (3) years?".

II.

a. On or about July 1, 1999, Applicant submitted her Application for Licensure by Examination to the Board of Vocational Nurse Examiners for the State of Texas. On said Application, Applicant answered "yes" to the question(s) asking: "Have you ever been convicted of a misdemeanor other that a minor traffic violation?".

b. On or about July 5, 1990, Applicant was convicted of the Misdemeanor offense of: DRIVING WHILE INTOXICATED in the County Court at Law Austin, County, Texas, under Cause Number 15289. As a result of said conviction; Applicant was placed on probation for a period of two (2) years.

c. On or about June 27, 1991, Applicant was convicted of the Misdemeanor offense of: DRIVING WHILE INTOXICATED in the County Court at Law Austin, County, Texas, under Cause Number 15657. As a result of said conviction; Applicant was placed on probation for a period of two (2) years.

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d. On about April 5, 1996, Applicant was indicted in the 155th Judicial District Court of Austin County, Texas, under Cause Number 96R-028 for the Felony offense of: DRIVING WHILE INTOXICATED. Subsequently, on December 9, 1997, Applicant's charge was reduced to a Class B Misdemeanor OBSTRUCTING A HIGHWAY.

e. Applicant has been convicted of a crime, which the Board considers to be directly related to the duties and responsibilities of a Licensed Vocational Nurse. Said conviction is inconsistent with the basic duties and responsibilities inherent in the occupation of vocational nursing in that said occupation requires knowledge and familiarity of drugs, and compliance with drug laws.

III.

a. On about August 4, 1999, the Board of Vocational Nurse Examiners received an unfavorable letter from the Program Director of Blinn College, in Brenham, Texas. Said letter indicated that Applicant on July 29, 1999, had reported to a clinical site with the odor of Alcohol aboard her person.

By Applicant's signature on this Order, Applicant neither admits nor denies the truth of the matters previously set out in this Order with respect to the above mentioned investigation. By Applicant's signature on this Order, Applicant acknowledges that they have read and understood this Order and have approved it for consideration by the Board.

By their notarized signature on this Order, Applicant does hereby waive the right to a formal Complaint, Notice of Hearing, and a Public Hearing held before an Administrative Law Judge with the State Office of Administrative Hearings, and to judicial review of this disciplinary action. Notice of this disciplinary action will appear in the Board's newsletter sent to Texas employers.

ORDER OF THE BOARD

NOW THEREFORE, IT IS ORDERED, that MELISSA JASEK AKA MELISSA KAYE TODD is hereby allowed to take the examination for licensure, and upon obtaining a passing score, be issued a license to practice vocational nursing in the State of Texas. Said license shall be suspended, with said suspension stayed and placed on probation for a period of two (2) years.

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The probation of said license is subject to the following stipulations, to wit:

1. That is Applicant's place of employment, name, address or telephone number changes, Applicant is to notify the Board office immediately, or no later than ten (10) days after said change has occurred. Said notification shall be in the form of a written letter or report.

2. That Applicant shall comply with Federal, State, and local laws, and all the provisions of the Vocational Nurse Act and Rules and Regulations of the Board.

3. That by copy of this Board Order Applicant shall provide notice of Board disciplinary action to his/her immediate nursing supervisor(s) and Director(s) of Nursing, throughout the term of probation.

4. That Applicant shall be responsible for causing his/her immediate nursing supervisor(s) to submit satisfactory reports directly to the Board office on a monthly basis for the first six (6) months of probation. Thereafter, and throughout the remainder of said probation, Applicant shall be responsible for causing his/her immediate nursing supervisor(s) to submit satisfactory reports directly to the Board office on a quarterly basis.

5. That any period(s) of nursing unemployment must be documented in writing by Applicant and submitted to the Board office, as provided in Stipulation No. four (4).

6. That Applicant shall work only under the supervision of a licensed medical professional (M.D., R.N., L.V.N.) who is physically present on the work premises during Applicant's shift assignment(s), throughout the term of probation.

7. That Applicant shall not be employed by a nurse registry, temporary nurse employment agency, home health agency, or as a private duty nurse, throughout the term of probation.

8. That Applicant shall not be the only licensed medical professional in the facility throughout the term of probation.

9. That Applicant shall attend weekly meetings of Alcoholics Anonymous (AA), and shall be responsible for causing his/her program sponsor to submit satisfactory reports directly to the Board office on a monthly basis for the first year of probation. Thereafter, and throughout the the remainder of said probation, Applicant shall be responsible for causing his/her program sponsor to submit satisfactory reports directly to the Board office on a quarterly basis.

10. That Applicant shall and hereby agrees to remain free of alcohol and all unprescribed controlled substances. Any controlled or legend medication must be prescribed by a physician knowledgeable about the disease of addiction, as well as Applicant's history, and it is incumbent upon Applicant to insure such physician knowledge. In all such cases, the prescribed drugs must be verified in writing to the Board by the prescribing physician.

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11. That Applicant shall submit to monthly blood alcohol drug screen(s) upon demand of the Board staff for the first year of probation. Thereafter, and throughout the remainder of said probation, Applicant shall submit to random periodic blood alcohol drug screen(s) upon demand of the Board staff throughout the term of probation. Applicant shall submit to a drug screening panel consisting of the following: Alcohol, Amphetamines, Barbiturates, Benzodiazepines, Cannabinoids, Cocaine, Hydrocodone, Meperidine, Opiates, Propoxyphene, PCP, Morphine, Codeine, Methadone, and Methaqualone. Said screen(s) shall be properly monitored with adherence to chain of custody procedures. A positive result shall be legally confirmed by Gas Liquid Chromatography/Mass Spectrometry (GCMS). The results of said screen(s) shall be borne by Respondent. the report of a positive drug screen shall be considered a violation of probation.

12. That Applicant shall provide the Board a telephone number by which Applicant may be contacted between the hours of 8:00 a.m. and 5:00 p.m. on weekdays. Applicant must maintain with the Board, during the term of this probation, a current telephone number in order for the Board to request random blood alcohol and urine drug screens, as provided in Stipulations No. eleven (11). An inability to contact Respondent by telephone to request said required drug screens shall be considered a violation of probation.

13. That Applicant shall obtain counseling (LCDC) counseling and shall be responsible for causing his/her counselor to submit satisfactory reports directly to the Board office on a monthly basis for the first six (6) months of probation. Thereafter, and throughout the remainder of said probation, Applicant shall obtain counseling and be responsible for causing his/her counselor to submit satisfactory reports directly to the Board office on a quarterly basis. The receipt of an unfavorable and/or untimely report shall be considered a violation of probation.

14. That Respondent shall pay a Probation Monitoring fee in the amount of thirty ($30.00) dollars in the form of a cashier's check or money order, payable to the Board of Vocational Nurse Examiners. Said fee shall be paid quarterly, due on the 15th of each quarter, commencing the quarter following the date of the Board's endorsement of the Order, and continuing thereafter until the successful completion of Respondent's probation. Said fee shall be sent to the Board office, addressed to the "Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, TX 78701". Failure by Respondent to make any quarterly payment on time shall constitute a violation of probation.

This Agreed Order shall not be effective or take effect and become enforceable in accordance with its terms until endorsed by a majority of the Board present and voting, at its next regularly called session.

Dated this the 12th day of October, 1999.

Melissa Kaye Jasek
Signature of Applicant

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BY:

00174721

AGREED BOARD ORDER
RE: MELISSA KAYE JASEK AKA MELISSA KAYE TODD, EXAM APPLICANT
PAGE 5

581 FM 1456
Current Address

Belleville, Tx. 77418
City, State and Zip

409 / 865-2676 / wk (409) 865-3145
Area Code and Telephone Number (409) 836-6611
wk (409) 865-3689

The State of Texas
County of WASHINGTON

Before me, the undersigned authority, on this day personally appeared MELISSA JASEK AKA MELISSA KAYE TODD, who being duly sworn by me stated that he or she executed the above for the purpose therein contained, and that he or she understood same.

SWORN TO AND SUBSCRIBED before me this the 12th day of October, 1999.

ELLA M. RAU
NOTARY PUBLIC
STATE OF TEXAS
My Commission Expires 10-3-2001

Ella M. Rau
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS
My Commission Expires 10-3-2001

Mary M. Strange
Mary M. Strange, RN
Agent for the Board of
Vocational Nurse Examiners

SWORN TO AND SUBSCRIBED before me, the undersigned authority, on this the 21st day of October, 1999.

LINDA RAE KENT
NOTARY PUBLIC
STATE OF TEXAS
Expires:
10-27-01

NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

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BY:

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WHEREFORE, PREMISES CONSIDERED, the Board of Vocational Nurse Examiners for the State of Texas does hereby ratify and adopt the Agreed Order that was signed on the 12th day of October, 1999 by Melissa Kaye Jasek aka Melissa Kaye Todd, Exam Applicant /Endorsement Applicant and that Said Order is Final.

Effective this 6th day of December, 1999.

Mary M. Strange

Mary M. Strange, RN
Executive Director
On Behalf of Said Board

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BY:

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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of December, 1999, a true and correct copy of the foregoing **BOARD ORDER** was served by placement in the U.S. Mail, first class, and addressed to the following person(s):

MELISSA JASEK
581 FM 1456
BELLVILLE, TX 77418

Mary M. Strange

Mary M. Strange, RN
Executive Director
Agent for the Board of Vocational Nurse Examiners

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BY:

BEFORE THE BOARD OF NURSE EXAMINERS
FOR THE STATE OF TEXAS
****

In the Matter of Vocational Nurse License Number 174721	§	AGREED
issued to MELISSA KAYE BURKE (JASEK)	§	ORDER

On this day the Board of Nurse Examiners for the State of Texas, hereinafter referred to as the Board, considered the matter of MELISSA KAYE BURKE (JASEK), Vocational Nurse License Number 174721, hereinafter referred to as Respondent.

Information received by the Board produced evidence that Respondent may have violated Section 302.402(a)(10), and Texas Occupations Code. Respondent waived informal conference, notice and hearing, and agreed to the entry of this Order offered on July 6, 2006, by Katherine A. Thomas, MN, RN, Executive Director.

FINDINGS OF FACT

1. Prior to the institution of Agency proceedings, notice of the matters specified below in these Findings of Fact was served on Respondent and Respondent was given an opportunity to show compliance with all requirements of the law for retention of the license.

2. Respondent waived informal conference, notice and hearing, and agreed to the entry of this Order.

3. Respondent is currently licensed to practice vocational nursing in the State of Texas.

4. Respondent received a Certificate in Vocational Nursing from Blinn College, Brenham, Texas, on August 11, 1999. Respondent was licensed to practice vocational nursing in the State of Texas on December 16, 1999.

5. Respondent's vocational nursing employment history is unknown.

6. On or about December 10, 1999, the Board of Vocational Nurse Examiners for the State of Texas endorsed an AGREED BOARD ORDER ordering that Respondent's license to practice vocational nursing in the State of Texas be suspended, suspension stayed and placed on probation for a period of two (2) years. A copy of this order is attached and incorporated herein.

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7. On May 12, 2003, Respondent plead "Guilty" and was "Convicted" of DRIVING WHILE INTOXICATED - 2ND OFFENSE (a Class A Misdemeanor offense committed April 28, 2002), under Cause Number 12,544, in the 21st District Court of Burleson County, Texas. As a result of the plea, Respondent was placed on probation for a period of two (2) years and ordered to pay a fine in the amount of one thousand dollars ($1,000.00).

8. The Respondent's conduct described in the preceding Finding of Fact was reportable under the provisions of Sections 301.401-301.419, Texas Occupations Code.

9. The Board finds that there exists serious risks to public health and safety as a result of impaired nursing care due to intemperate use of controlled substances or chemical dependency.

10. Respondent's conduct described in Findings of Fact Numbers Six (6) and Seven (7) were significantly influenced by Respondent's chemical dependency.

11. Respondent's compliance with the terms of a Board approved peer assistance program should be sufficient to protect patients and the public.

CONCLUSIONS OF LAW

1. Pursuant to Texas Occupations Code, Sections 301.451-301.455, the Board has jurisdiction over this matter.

2. Notice was served in accordance with law.

3. The evidence received is sufficient to prove violation of Section 302.402(a)(3)(B), (9), & (10), Texas Occupations Code, and 22 TEX. ADMIN. CODE §239.11(28) & (29)(A)(iv).

4. The evidence received is sufficient cause pursuant to Section 301.452(b), Texas Occupations Code, to take disciplinary action against Vocational Nurse License Number 174721, heretofore issued to MELISSA KAYE BURKE (JASEK), including revocation of Respondent's vocational license to practice nursing in the State of Texas.

5. The Board may, in its discretion, order a nurse to participate in a peer assistance program approved by the Board if the nurse would otherwise have been eligible for referral to peer assistance pursuant to Section 301.410, Texas Occupations Code.

ORDER

IT IS THEREFORE AGREED and ORDERED that RESPONDENT, in lieu of the sanction of Revocation under Section 301.453, Texas Occupations Code, SHALL comply with the following conditions for such a time as is required for RESPONDENT to successfully complete the Texas Peer Assistance Program for Nurses (TPAPN):

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BY:

(1) RESPONDENT SHALL, within forty-five (45) days following the date of entry of this final Order, apply to and be accepted into the TPAPN, which SHALL include payment of a non-refundable participation fee in the amount of three hundred fifty dollars ($350) payable to TPAPN.

(2) Upon acceptance into the TPAPN, RESPONDENT SHALL waive confidentiality and provide a copy of the executed TPAPN contract to the Board of Nurse Examiners.

(3) RESPONDENT SHALL comply with all requirements of the TPAPN contract during its term.

(4) RESPONDENT SHALL CAUSE the TPAPN to notify the Board of Nurse Examiners of any violation of the TPAPN contract.

IT IS FURTHER AGREED and ORDERED, RESPONDENT SHALL comply in all respects with the Nursing Practice Act, Revised Civil Statutes of Texas as amended, Texas Occupations Code, Section §§301.001 *et seq.*, the Rules and Regulations Relating to Nurse Education, Licensure and Practice, 22 TEX. ADMIN. CODE §211.01 *et seq.* and this Order.

IT IS FURTHER AGREED and ORDERED that this Order SHALL be applicable to Respondent's multistate licensure privileges, if any, to practice vocational nursing in the State of Texas.

IT IS FURTHER AGREED and ORDERED that while Respondent's license is encumbered by this Order, Respondent may not work outside the State of Texas pursuant to a multistate licensure privilege without the written permission of the State of Texas and the Board of Nursing in the party state where Respondent wishes to work.

IT IS FURTHER AGREED, SHOULD RESPONDENT fail to comply with this Order or the terms of the participation agreement with the TPAPN, such noncompliance will result in further disciplinary action including revocation of Respondent's license and multistate licensure privileges, if any, to practice vocational nursing in the State of Texas.

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BY:

RESPONDENT'S CERTIFICATION

I understand that I have the right to legal counsel prior to signing this Agreed Order. I have reviewed this Order. I neither admit nor deny the violation alleged herein. I do acknowledge possessing a diagnosis that deems me eligible to participate in the Texas Peer Assistance Program for Nurses. By my signature on this Order, I agree to the Findings of Fact, Conclusions of Law, and Conditions One (1) through Four (4) of this Order to obtain disposition of the allegations through peer assistance and to avoid further disciplinary action in this matter. I waive judicial review of this Order. I understand that this Order becomes effective upon acceptance by the Executive Director on behalf of the Board of Nurse Examiners, and a copy will be mailed to me. I understand that if I fail to comply with all terms and conditions of this Order, I will be subject to investigation and disciplinary sanction, including revocation of my license to practice vocational nursing in the State of Texas, as a consequence of my noncompliance.

Signed this 2 day of August, 2006

Melissa Kaye Burke Jasek

MELISSA KAYE BURKE (JASEK), Respondent

Sworn to and subscribed before me this 2 day of August, 2006

SEAL

TARA SCHOVAJAS
Notary Public, State of Texas
My Commission Expires Dec. 01 2006

Tara Schovajas

Notary Public in and for the State of Texas

Approved as to form and substance.

Lane D. Thibodeaux, Attorney for Respondent

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BY:

WHEREFORE PREMISES CONSIDERED, the Executive Director, on behalf of the Board of Nurse Examiners for the State of Texas, does hereby accept and enter the Agreed Order that was signed on the 2nd day of Aug. 2006, by MELISSA KAYE BURKE (JASEK), Vocational Nurse License Number 174721, and said Order is final.

Entered and effective this 8th day of Aug., 2006.

Katherine A. Thomas, MN, RN
Executive Director on behalf
of said Board

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AUG 1 2 2006
BY:

BEFORE THE BOARD OF NURSE EXAMINERS
FOR THE STATE OF TEXAS
****

In the Matter of Vocational Nurse License Number 174721 issued to MELISSA BURKE § AGREED
§ ORDER

On this day the Board of Nurse Examiners for the State of Texas, hereinafter referred to as the Board, considered the matter of MELISSA BURKE, Vocational Nurse License Number 174721, hereinafter referred to as Respondent.

Information received by the Board produced evidence that Respondent may have violated Section 301.452(b)(1),(9)&(10), Texas Occupations Code. Respondent waived representation by counsel, informal conference, notice and hearing, and agreed to the entry of this Order offered on May 24, 2007, by Katherine A. Thomas, MN, RN, Executive Director, subject to ratification by the Board.

FINDINGS OF FACT

1. Prior to the institution of Agency proceedings, notice of the matters specified below in these Findings of Fact was served on Respondent and Respondent was given an opportunity to show compliance with all requirements of the law for retention of the license.

2. Respondent waived representation by counsel, informal conference, notice and hearing, and agreed to the entry of this Order.

3. Respondent is currently licensed to practice vocational nursing in the State of Texas.

4. Respondent received a Certificate in Vocational Nursing from Blinn College, Brenham, Texas, on August 11, 1999. Respondent was licensed to practice vocational nursing in the State of Texas on December 16, 1999.

5. Respondent's vocational nursing employment history includes:

12/99-2002	Unknown

I do hereby certify this to be a complete, accurate, and true copy of the document which is on file or is of record in the offices of the Texas Board of Nursing.
Executive Director of the Board

Respondent's vocational nursing employment history continued:

2002-2003	Staff Nurse	Brenham Rest Home Brenham, Texas
8/03-Unknown	Staff Nurse	Colonial Belle Nursing Home Bellville, Texas
7/04-2/07	Staff Nurse/ Charge Nurse	Brenham Rest Home Brenham, Texas
3/07-Present	Unknown	

6. On December 6, 1999, Respondent was issued an Agreed Board Order by the Board of Vocational Nurse Examiners for the State of Texas. A copy of the Agreed Board Order dated December 6, 1999, is attached and incorporated by reference as part of this Order.

7. On August 8, 2006, Respondent was issued an Agreed Order by the Board of Nurse Examiners for the State of Texas which required her to participate in and successfully complete the Texas Peer Assistance Program for Nurses (TPAPN). A copy of the Findings of Fact, Conclusions of Law, and Agreed Order dated August 8, 2006, is attached and incorporated by reference as part of this Order.

8. At the time of the incident, Respondent was employed as a Charge Nurse with Brenham Rest Home, Brenham, Texas, and had been in this position for approximately two (2) years and six (6) months.

9. On or about January 25, 2007, while employed with Brenham Rest Home, Brenham, Texas, Respondent became non-compliant with the Agreed Order issued to her by the Board of Nurse Examiners for the State of Texas on August 8, 2006. Non-compliance is the result of her submission of a specimen for a drug/alcohol screen which tested positive for the presence of alcohol. Stipulation Number Three (3) of the Agreed Order dated August 8, 2006, states the following:

"RESPONDENT SHALL comply with all requirements of the TPAPN contract during its term."

10. Respondent denies consuming alcohol during her participation in the TPAPN program. Respondent states that on this particular day she began her shift at 6:00am and ended her shift at 2:00pm. Respondent states that she was the only Charge Nurse on the floor so she did not receive a lunch break or leave the building during her shift. At the end of her shift, Respondent states that her relief was late and she was running out of time to get to a test site for her required drug screen. Respondent states that she gave a brief report and the keys to her Director of Nursing and went and tested. Respondent states she returned to work after testing to give report to the oncoming nurse. Respondent states that when she learned that

her screen was positive, she requested that it be reviewed by a Medical Review Officer, who stated that the results suggested that she had ingested alcohol. After this, Respondent states that she suffered a traumatic event and attempted to continue her sobriety. About three (3) weeks after this event, Respondent states that she was so devastated and depressed that she called her family practitioner and requested an anti-anxiety medication and medication to help her sleep. Respondent states that she only takes this medication when she is overwhelmed and extremely upset. Respondent states that she never takes this medication while working.

11. Respondent's last known date of sobriety is July 25, 2007, as indicated in Finding of Fact Number Nine (9).

12. The Board finds that there exists serious risks to public health and safety as a result of impaired nursing care due to intemperate use of controlled substances or chemical dependency.

CONCLUSIONS OF LAW

1. Pursuant to Texas Occupations Code, Sections 301.451-301.555, the Board has jurisdiction over this matter.

2. Notice was served in accordance with law.

3. The evidence received is sufficient to prove violations of Section 301.452(b)(1),(9)&(10), Texas Occupations Code, and 22 TEX. ADMIN. CODE §217.12(9),(10)(A)&(11)(B).

4. The evidence received is sufficient cause pursuant to Section 301.452(b), Texas Occupations Code, to take disciplinary action against Vocational Nurse License Number 174721, heretofore issued to MELISSA BURKE, including revocation of Respondent's license to practice vocational nursing in the State of Texas.

ORDER

IT IS THEREFORE AGREED and ORDERED, subject to ratification by the Board of Nurse Examiners, that License Number 174721, previously issued to MELISSA BURKE, to practice vocational nursing in Texas is hereby SUSPENDED and said suspension is enforced until Respondent completes a treatment program approved by the Board, provides documentation of successful completion, and has obtained twelve (12) consecutive months of sobriety. Any relapse prior to the completion of the twelve (12) consecutive months of sobriety will result in an extension

of the enforced suspension until such twelve (12) consecutive months of sobriety and additional treatment have been attained.

IT IS FURTHER ORDERED that Permanent Certificate Number 174721 previously issued to MELISSA BURKE, upon receipt of this Order, be immediately delivered to the office of the Board of Nurse Examiners for the State of Texas.

IT IS FURTHER AGREED and ORDERED that this Order SHALL be applicable to Respondent's multistate privilege, if any, to practice vocational nursing in compact states.

IT IS FURTHER AGREED and ORDERED that while Respondent's license is encumbered by this order the Respondent may not work outside the State of Texas pursuant to a multistate licensure privilege without the written permission of the State of Texas and the Board of Nursing in the party state where Respondent wishes to work.

IT IS FURTHER AGREED, upon verification of successful completion of the approved treatment program and twelve (12) consecutive months of sobriety as set out in this Order, the Suspension will be stayed, and RESPONDENT will be placed on probation for three (3) years with the following agreed terms of probation:

(1) RESPONDENT SHALL comply in all respects with the Nursing Practice Act, Revised Civil Statutes of Texas as amended, Texas Occupations Code, §§301.001 *et seq.*, the Rules and Regulations Relating to Nurse Education, Licensure and Practice, 22 TEX. ADMIN. CODE §211.01 *et seq.* and this Order.

(2) RESPONDENT SHALL pay all re-registration fees, if applicable, and be issued a license to practice vocational nursing in the State of Texas with the appropriate notation.

(3) RESPONDENT SHALL, within one (1) year of the suspension being stayed,

successfully complete a course in Texas nursing jurisprudence and ethics. RESPONDENT SHALL obtain Board approval of the course prior to enrollment only if the course is not being offered by a pre-approved provider. Home study courses and video programs will not be approved. In order for the course to be approved, the target audience shall include nurses. It shall be a minimum of six (6) contact hours in length. The course's content shall include the Nursing Practice Act, standards of practice, documentation of care, principles of nursing ethics, confidentiality, professional boundaries, and the Board's Disciplinary Sanction Policies regarding Sexual Misconduct, Fraud, Theft and Deception, Nurses with Chemical Dependency, and Lying and Falsification. Courses focusing on malpractice issues will not be accepted. RESPONDENT SHALL CAUSE the sponsoring institution to submit a Verification of Course Completion form, provided by the Board, to the Office of the Board to verify RESPONDENT's successful completion of the course. This course shall be taken in addition to any other courses stipulated in this Order, if any, and in addition to any continuing education requirements the Board has for relicensure. *Board-approved courses may be found at the following Board website address: http://www.bne.state.tx.us/about/stipscourses.html.*

(4) RESPONDENT SHALL pay a monetary fine in the amount of three hundred fifty dollars ($350.00). RESPONDENT SHALL pay this fine within forty-five (45) days of the suspension being stayed. Payment is to be made directly to the Board of Nurse Examiners in the form of cashier's check or U.S. money order. Partial payments will not be accepted.

IT IS FURTHER AGREED, SHOULD RESPONDENT PRACTICE AS A VOCATIONAL NURSE IN THE STATE OF TEXAS, RESPONDENT WILL PROVIDE DIRECT PATIENT CARE AND PRACTICE IN A HOSPITAL, NURSING HOME, OR OTHER CLINICAL SETTING AND RESPONDENT MUST WORK IN SUCH SETTING A MINIMUM OF SIXTY-FOUR (64) HOURS PER MONTH UNDER THE FOLLOWING

PROBATION CONDITIONS FOR THREE (3) YEARS OF EMPLOYMENT. THE LENGTH OF THE PROBATIONARY PERIOD WILL BE EXTENDED UNTIL SUCH THIRTY-SIX (36) MONTHS HAVE ELAPSED. PERIODS OF UNEMPLOYMENT OR OF EMPLOYMENT THAT DO NOT REQUIRE THE USE OF A VOCATIONAL NURSE (LVN) LICENSE WILL NOT APPLY TO THIS PROBATIONARY PERIOD:

(5) RESPONDENT SHALL notify all future employers in vocational nursing of this Order of the Board and the probation conditions on RESPONDENT's license. RESPONDENT SHALL present a complete copy of this Order and all Proposals for Decision issued by the Administrative Law Judge, if any, to each future employer prior to accepting an offer of employment.

(6) RESPONDENT SHALL CAUSE each present employer in vocational nursing to submit the Notification of Employment form, which is provided to the Respondent by the Board, to the Board's office within ten (10) days of receipt of this Order. RESPONDENT SHALL CAUSE each future employer to submit the Notification of Employment form, which is provided to the Respondent by the Board, to the Board's office within five (5) days of employment as a vocational nurse.

(7) For the first year of employment as a Vocational Nurse under this Order, RESPONDENT SHALL be directly supervised by a Registered Nurse or Licensed Vocational Nurse. Direct supervision requires another professional or vocational nurse to be working on the same unit as RESPONDENT and immediately available to provide assistance and intervention. RESPONDENT SHALL work only on regularly assigned, identified and predetermined unit(s). The RESPONDENT SHALL NOT be employed by a nurse registry, temporary nurse employment agency, hospice, or home health agency. RESPONDENT SHALL NOT be self-employed or contract for services. Multiple employers are prohibited.

(8) For the remainder of the probation period, RESPONDENT SHALL be supervised by a Registered Nurse or Vocational Nurse who is on the premises. The supervising RN or LVN is not required to be on the same unit or ward as RESPONDENT, but should be on the facility grounds and readily available to provide assistance and intervention if necessary. The supervising RN or LVN shall have a minimum of two (2) years experience in the same or similar practice setting to which the Respondent is currently working. RESPONDENT SHALL work only regularly assigned, identified and predetermined unit(s). RESPONDENT SHALL NOT be employed by a nurse registry, temporary nurse employment agency, hospice, or home health agency. RESPONDENT SHALL NOT be self-employed or contract for services. Multiple employers are prohibited.

(9) RESPONDENT SHALL NOT practice as a vocational nurse on the night shift, rotate shifts, work overtime, accept on-call assignments, or be used for coverage on any unit other than the identified, predetermined unit(s) to which Respondent is regularly assigned for one (1) year of employment as a vocational nurse.

(10) RESPONDENT SHALL NOT practice as a vocational nurse in any critical care area for one (1) year of employment as a vocational nurse. Critical care areas include, but are not limited to, intensive care units, emergency rooms, operating rooms, telemetry units, recovery rooms, and labor and delivery units.

(11) RESPONDENT SHALL NOT administer or have any contact with controlled substances, Nubain, Stadol, Dalgan, Ultram, or other synthetic opiates for one (1) year of employment as a vocational nurse.

(12) RESPONDENT SHALL CAUSE each employer to submit, on forms provided to the Respondent by the Board, periodic reports as to RESPONDENT's capability to practice vocational nursing. These reports shall be completed by the Registered Nurse or

Vocational Nurse who supervises the RESPONDENT. These reports shall be submitted by the supervising RN or LVN to the office of the Board at the end of each three (3) months for three (3) years of employment as a vocational nurse.

(13) RESPONDENT SHALL abstain from the consumption of alcohol, Nubain, Stadol, Dalgan, Ultram, or other synthetic opiates, and/or the use of controlled substances, except as prescribed by a licensed practitioner for a legitimate purpose. If prescribed, RESPONDENT SHALL CAUSE the licensed practitioner to submit a written report identifying the medication, dosage and the date the medication was prescribed. The report shall be submitted directly to the office of the Board by the prescribing practitioner, within ten (10) days of the date of the prescription. **In the event that prescriptions for controlled substances are required for periods of two (2) weeks or longer, the Board may require and RESPONDENT SHALL submit to an evaluation by a Board approved physician specializing in Pain Management or Psychiatry. The performing evaluator will submit a written report to the Board's office, including results of the evaluation, clinical indications for the prescriptions, and recommendations for on-going treatment within thirty (30) days from the Board's request.**

(14) RESPONDENT SHALL submit to random periodic screens for controlled substances, tramadol hydrochloride (Ultram), and alcohol. For the first three (3) month period, random screens shall be performed at least once per week. For the next three (3) month period, random screens shall be performed at least twice per month. For the next six (6) month period, random screens shall be performed at least once per month. For the remainder of the probation period, random screens shall be performed at least once every three (3) months.

Specimens shall be screened for at least the following substances:

Amphetamines	Meperidine
Barbiturates	Methadone

Benzodiazepines	Methaqualone
Cannabinoids	Opiates
Cocaine	Phencyclidine
Ethanol	Propoxyphene
tramadol hydrochloride (Ultram)	

A Board representative may appear at the RESPONDENT's place of employment at any time during the probation period and require RESPONDENT to produce a specimen for screening.

All screens shall be properly monitored and produced in accordance with the Board's policy on Random Drug Testing. A complete chain of custody shall be maintained for each specimen obtained and analyzed. RESPONDENT SHALL be responsible for the costs of all random drug screening during the probation period.

Any positive result for which the nurse does not have a valid prescription will be regarded as non-compliance with the terms of this Order and may subject the nurse to further disciplinary action by this Board. Failure to report for a drug screen may be considered the same as a positive result and may result in further disciplinary action by this Board.

(15) RESPONDENT SHALL participate in therapy with a "professional counselor" possessing credentials approved by the Board. RESPONDENT SHALL CAUSE the therapist to submit written reports, on forms provided by the Board, as to the RESPONDENT's progress in therapy, rehabilitation and capability to safely practice vocational nursing. The report must indicate whether or not the RESPONDENT's stability is sufficient to provide direct patient care safely. Such reports are to be furnished each and every month for three (3) months. If therapy is recommended for beyond three (3) months, the reports shall then be required at the end of each three (3) month period for the duration of the probation period, or until RESPONDENT is dismissed from therapy.

(16) RESPONDENT SHALL attend at least two (2) support group meetings each

week, one of which shall be for substance abuse; and RESPONDENT SHALL provide acceptable evidence of attendance. Acceptable evidence shall consist of a written record of at least; the date of each meeting, the name of each group attended, and the signature and printed name of the chairperson of each group attended by RESPONDENT. RESPONDENT SHALL submit the required evidence on the forms provided by the Board at the end of every three (3) months. No duplications, copies, third party signatures, or any other substitutions will be accepted as evidence.

IT IS FURTHER AGREED and ORDERED that if during the period of probation, an additional allegation, accusation, or petition is reported or filed against the Respondent's license, the probationary period shall not expire and shall automatically be extended until the allegation, accusation, or petition has been acted upon by the Board.

IT IS FURTHER AGREED, that upon full compliance with the terms of this Order, RESPONDENT SHALL be issued an unencumbered license and multistate licensure privileges, if any, to practice vocational nursing in the State of Texas.

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RESPONDENT'S CERTIFICATION

I understand that I have the right to legal counsel prior to signing this Agreed Order. I waive representation by counsel. I have reviewed this Order. I neither admit nor deny the violation alleged herein. By my signature on this Order, I agree to the Findings of Fact, Conclusions of Law, Order, and any conditions of said Order, to avoid further disciplinary action in this matter. I waive judicial review of this Order. I understand that this Order is subject to ratification by the Board. When this Order is ratified, the terms of this Order become effective, and a copy will be mailed to me. I understand that if I fail to comply with all terms and conditions of this Order, I will be subject to investigation and disciplinary sanction, including revocation of my license to practice vocational nursing in the State of Texas, as a consequence of my noncompliance.

Signed this 11th day of July, 2007.

Melissa Burke

MELISSA BURKE, Respondent

Sworn to and subscribed before me this 11th day of July, 2007.

SEAL

BARBARA J. LANE NOTARY PUBLIC STATE OF TEXAS EXPIRES 11-29-2010

Barbara J. Lane

Notary Public in and for the State of Texas

WHEREFORE, PREMISES CONSIDERED, the Board of Nurse Examiners for the State of Texas does hereby ratify and adopt the Agreed Order that was signed on the 11th day of July, 2007, by MELISSA BURKE, Vocational Nurse License Number 174721, and said Order is final.

Effective this 14th day of August, 2007.

Katherine A. Thomas, MN, RN
Executive Director on behalf
of said Board